HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT PETITION Nos.16290 of 2007, 16585 of 2007, 17286 of 2007 AND 17363 of 2007

WRIT PETITION No.16290 OF 2007:

Between:

M.Ratin and another.

…Petitioners

AND:
Government of A.P.,
Higher Education (EC) Department,
Rep., by its Principal Secretary,
Secretariat Buildings, Masabtank,
Hyderabad and six others.

…Respondents.

WRIT PETITION No.16585 OF 2007:

Between:

B. Swaroop Kumar and another

… Petitioners

AND

Government of A.P.,
Higher Education (EC) Department,
Rep., by its Principal Secretary,
Secretariat Buildings, Masabtank,
Hyderabad and six others.

… Respondents

WRIT PETITION No.17286 OF 2007:

Between:

S. Namrata Salunke & another

… Petitioners

AND

Government of A.P.,
Higher Education (EC) Department,
Rep., by its Principal Secretary,
Secretariat Buildings, Masabtank,
Hyderabad and six others.

… Respondents

WRIT PETITION No.17363 OF 2007:

Between:

C.Sandeep Kumar and another

… Petitioners

AND

Government of A.P.,
Higher Education (EC) Department,
Rep., by its Principal Secretary,
Secretariat Buildings, Masabtank,
Hyderabad and six others.

… Respondents

; ORDER :

Counsel for the petitioner : Shri Sri M. Satyanarayana Goud.

Counsel for the respondents 3 to 5 : Sri B. Adinarayana Rao

Counsel for respondent No.1 : Government Pleader for Higher Education

Dated:28th September, 2007

Per C.V.NAGARJUNA REDDY, J.

Since a common issue in all these four writ petitions is involved, they are being disposed of by a common order.

The petitioners in all these four writ petitions passed the qualifying examination, namely, two year intermediate course and are eligible for being admitted into the Engineering Course in 'B' category seats. The petitioners claim that though they have visited respondent Nos.4 and 5 colleges many times, they were not informed about the details of the availability of 'B' category seats nor they were considered for admission under the said category; that they came to know that respondent No.3 commenced the process of admission of students in 'B' category seats without prior notification and proper intimation to the general public. It is averred that though respondent Nos.3 to 5 have been indulging in blatant violation of the Rules framed by the Government as notified in G.O.Ms.No.53 dated 10.05.2006 in filling up 'B' category seats, by keeping the more meritorious candidates aspiring to join Engineering course in respondent Nos.4 and 5 colleges in dark, respondent Nos.1, 2, 6 and 7 have not been taking any effective steps to curb the malpractices of respondent Nos.3 to 5. The petitioners therefore sought for a writ of mandamus to declare the action of respondent Nos.3 to 5 in not considering their applications for admission into B.E., CScE/ECE, B.E. Mech./CScE/Mechatronics and B.E. ECE/EEE courses; in not issuing

notification for admission under 20% of 'B' category seats into Under Graduate Professional Course in Engineering (including Technology) for the academic year 2007-2008 in respondent Nos.4 and 5 colleges in accordance with G.O.Ms.No.53 dated 10.05.2006 as illegal, unconstitutional and violative of G.O.Ms.No.53 dated 10.05.2006 and for a consequential direction to respondent Nos.1 to 3 to ensure that respondent No.3 issues notification for admission into 20% 'B' category seats into respondent Nos.4 and 5 colleges. The petitioners also sought for a direction not to approve the admissions being made contrary to the Rules framed in G.O.Ms.No.53 dated 10.05.2006.

The Secretary of Andhra Pradesh State Council of Higher Education – respondent No.2 filed a common counter affidavit in Writ Petition Nos.16290, 1585 and 17363 of 2007 in which with reference to the allegation regarding violation of the Rules framed in G.O.Ms.No.53 dated 10.05.2006, he averred that the Rules notified in G.O.Ms.No.53 clearly stipulate that the institution shall notify the details of seats available under 'B' category and conduct admissions in a fair, transparent and non-exploitative manner. He further stated that the Rules neither prescribed the mode of notification nor assigned any role to respondent No.2 to regulate the procedure prescribed therein and that respondent No.2 is the competent authority notified under the said G.O. to approve the lists of the admission candidates in respect of the said quota. It is further stated that soon after completion of the admissions by the respondents' colleges, they send the lists of candidates for approval before the notified cut of date and that at that point of time, respondent No.2 verifies whether the colleges have complied with Rule 6 (ii) of the Rules in respect of 'B' category seats and that irregularities, if any, in notifying 'B' category seats will only be verified after the lists are submitted by the colleges. On this premise,

respondent No.2 averred that it was assigned with a limited role without being empowered to take regulatory measures. He further averred that the college managements are given certain liberty to fix their own modalities by notifying 'B' category seats in view of the observations made by the Supreme Court in **TMA Pai Foundation and others v. State of Karnataka and others**[1] that unaided professional institutions shall be given greater autonomy in determination of admission procedure and fee structure and the State regulation be minimal only to the extent of maintaining fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees; the modalities of notifying the seats were left to the private managements themselves and that if there is any irregularity or illegality committed by them in the admission process for 'B' category seats, it is for the committees constituted in pursuance of the judgment of the Supreme Court in **Islamic Academy of Education and another v. State of Karnataka and others**[2] to regulate such irregularities or illegalities. In its counter, the Secretary of respondent No.2 candidly admitted that none of the college managements, including respondent No.3, are not notifying the availability of 'B' category seats in the newspapers.

On behalf of respondent No.3, Sri D. Kamalakar Reddy, Secretary and Correspondent of respondent Nos.4 and 5 filed a counter-affidavit in which he gave out the historical background of respondent No.3 institution and respondent Nos.4 and 5 colleges set up by it. For the purpose of adjudication of the dispute involved in the present writ petitions, we consider it not necessary to refer to the averments relating to the history of respondent Nos.3 to 5. With respect to the procedure adopted by respondent No.3 for making admissions into 'B' category seats in respondent Nos.4 and 5

colleges, he has admitted that petitioner No.1 in W.P.No.16585 of 2007 sent his letter dated 02.06.2007 by which time, admissions in to respondent Nos.4 and 5 colleges were not notified; that the usual practice adopted by respondent No.3 society for filling up 'B' category seats is to notify the number of seats available under the said category by affixing notices in the notice board of the society and the colleges concerned; that notice dated 11.06.2007 was issued calling upon the students interested in seeking admission in 'B' category seats to approach the named representative of the society and the copy of the said notice was displayed on the notice boards (filed as Annexure R-3/5). It is asserted that it is not only the respondent No.3 institution, but also all the private unaided engineering colleges in the State which are adopting this procedure and that there is no requirement in the statutory rules that notification shall be published in newspapers. It is averred that the usual practice adopted by the candidates intending to take admissions in 'B' category seats is to approach the respective managements and obtain admissions after paying the requisite fees. It is also averred that many seats in 'A' category to be filled by the convenor are remaining vacant in many engineering colleges in the State and that if 'B' category seats remain vacant, the management would fall short of funds making it difficult even to meet the expenditure towards salaries to its teaching and non-teaching staff. Therefore, it is averred that as and when a student approaches the college seeking admission in 'B' category and if he fulfils the eligibility criteria notified in G.O.Ms.No.53, then such student is being admitted under the said category and that if the students are allowed to wait for a stipulated time for receipt of applications and to place them in the order of merit, then there is every chance of the students not turning up for admission or he having already got a seat in counselling in any other private

college leading to seats remaining vacant. It is further averred that the candidates should be admitted on the first come first serve basis under the management quota. It is further averred that neither petitioner No.1 nor his father approached the institution which fact shows that they are not interested in admission into the Engineering course and that even now vacant seats are available in certain branches of respondent Nos.4 and 5 institutions.

In paragraph 6 of the counter-affidavit, it is stated that the details of seats position are available in web sites of the AICTE, Director of Technical Education, Convenor EAMCET and the respective college web sites and unlike in the case of 'A' category seats, there is no requirement of notifying 'B' category seats in the newspapers. Respondent No.3 also questioned the bonafides of the petitioners in filing the writ petition as a piece of public interest litigation and in this regard it is stated in the counter-affidavit that there is a dispute among the members of the 3rd respondent society, some of whom are the children of the members of the board of convenors of respondent No.3; that they made certain scandalous allegations against the society and filed O.P.Nos.2007 and 2146 of 2006 under Section 23 of the Andhra Pradesh Registration Act, 2000 on the file of II Additional Chief Judge, City Civil Court, Hyderabad seeking declaration that they are members of the 3rd respondent society and they could not succeed in their attempt to get an injunction with the dismissal of their application by II Additional Chief Judge, City Civil Court, Hyderabad and it was confirmed by this Court in CRP.Nos.6269, 6353 and 6301 of 2006 and by the Supreme Court in Civil Appeal Nos.2196, 2197 and 2198 of 2007. It is further averred that a similar attempt was made by another member by filing O.P.No.1 of 2007 on the file of Vacation Civil Judge, Ranga Reddy and an application for injunction filed by him was also

dismissed by the said Court on 21.05.2007. It was emphasized in the counter that these disgruntled members of the society, in order to cause damage to respondent Nos.4 and 5 colleges run by respondent No.3 society, selectively filed the present writ petition leaving out 270 and odd other private unaided engineering colleges in the State of Andhra Pradesh.

In the reply affidavit filed by Dr. B. Arun Kumar, petitioner No.2 and the father of petitioner No.1 while denying the allegation that the writ petition is not filed in public interest averred that he has nothing to do with the litigation initiated by some persons against the society.

Heard Sri M. Satyanaraya Goud, learned counsel for the petitioners, Sri B. Adinarayana Rao for respondent Nos.3 to 5 and learned Government Pleader for Higher Education for respondent No.1.

Learned counsel for the petitioners submitted that respondent Nos.3 to 5 have been acting in violation of the Rules, in particular Rule 6(ii) in filling up 'B' category seats. The learned counsel further submitted that in view of lack of transparency on the part of respondent Nos.3 to 5, candidates with superior merit are being denied seats as the seats are being filled up without any notice to the intending candidates and they are indulging in commercialization of education.

Sri B. Adinarayana Rao, learned counsel for respondent Nos.3 to 5 while denying the allegation that respondent Nos.3 to 5 have not been following proper method in notifying the details of the availability of 'B' category seats, submitted that as there is no obligation on the part of respondent Nos.3 to 5, there was no need to notify the seats in the newspapers. He, however, contended that the details were made available not only in the web site of respondent No.2, but also in the web sites of respondent Nos.4 and 5 colleges. He further contended

that if the educational institutions are required to publish the details of the seats, call for applications and select the candidates on the basis of the merit, there is a possibility of the institutions not being able to fill up with 'B' category seats, which is the main source of income for them, because the candidates, who have applied and are made to wait, may choose to join in other institutions before they are given admission in the colleges, which they have applied earlier. Learned counsel submitted that to avoid such a situation, the college is adopting the method of first come first served and that all other colleges in the State are also following the same procedure. Learned counsel lamented that the petitioners for extraneous considerations selectively targetted respondent Nos.3 to 5 by lacing these writ petitions with the colour of public interest litigation, while in fact, this is only a facade to sub-serve their ulterior purposes.

Learned Government Pleader for Higher Education stated that since the Rules provide for notifying 'B' category seats in a fair, transparent and non-exploitative manner, respondent Nos.3 to 5 are bound to follow a proper procedure of notifying the availability of the seats and the schedule for filling them in a manner by which the public are duly informed in order to enable them to apply for and seek admissions into the Engineering course.

Before examining the issue whether respondent Nos.3 to 5 has followed proper procedure prescribed in the extant Rules in making admissions to 'B' category seats, we would like to dispose of the contention raised by respondent Nos.3 to 5 that these writ petitions are not filed in public interest. Respondent No.3, as already noted, referred to the litigations preceding the filing of these writ petitions. We have carefully perused Ex.Nos.R3/1 and R3/2, which are legal notices, R3/3, the judgment of the Supreme Court in Civil Appeal No.2197 of

2007 and R3/4, the order in I.A.No.147 of 2007 and find that none of the persons on whose behalf either legal notices were issued or are parties to the proceedings before the Courts are parties to these writ petitions. Respondent No.3 has not made specific averments establishing connection between the petitioners in these writ petitions and the persons, who are litigating against it nor has filed any material to establish nexus between the petitioners and the persons litigating against it.

From the mere fact that the petitioners chose respondent Nos.3 to 5 for filing the present writ petitions, this Court cannot refuse to entertain these writ petitions on the assumption that they were actuated by extraneous considerations or having malafaide intentions in filing the present writ petitions. The fact that in each of these writ petitions one or more candidates are seeking admission in these colleges is not in serious dispute. It cannot therefore be said that they have no locus to maintain the writ petitions. In the absence of sufficient material, on the basis of which, this Court can conclusively hold that the writ petitions are filed to settle private course, they cannot be thrown out, more so, when an issue involving larger public interest is raised. We are therefore not inclined to accept the contention of respondent No.3 to reject the writ petitions in limine without going into the merits of the issue raised in them.

The grievance of the petitioners projected in these writ petitions is that in making admissions to 'B' category seats, respondent Nos.3 to 5 are not following a fair and transparent method as enjoined on them by the Rules framed in G.O.Ms.No.53, dated 10.05.2006. In the light of this plea, the issue that falls for our consideration is two fold, namely, (1) what is the true meaning and purport of the word 'notify' in "fair, transparent and non-exploitative manner" as provided in Rule 6(ii)(1)

of the Rules, and (2) Whether the procedure, which is claimed to have been followed by respondent Nos.3 to 5 in filling up 'B' category seats for the academic year 2007-2008 constitutes sufficient compliance of Rule 6(ii)(1) of the Rules.

The Government of Andhra Pradesh in exercise of its rule making power conferred by Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 and in supercession of the Andhra Pradesh Unaided Non-Minority Professional Institutions (Regulation of Admissions into Under-Graduate Professional Courses through Common Entrance Test) Rules, 2003 framed the Andhra Pradesh Unaided Non-Minority Professional Institutions (Regulation of Admissions into Under-Graduate Professional Courses through Common Entrance Test) Rules, 2006 (for short "the Rules"). Framing of these Rules was necessitated by the dicta laid down by the Supreme Court in **T.M.A. Pai Foundation (1 supra)** and as interpreted i n **Islamic Academy of Education (2 supra)**. In this context, it is necessary to refer to the relevant Rules. Rule 2(i)(b) defines "Admissions and Fee Regulatory Committee (AFRC)" as committee established and constituted by the Government for regulating the admissions anf for fixing the fees to be charged from candidates seeking admission into unaided minority and non-minority professional institutions. Rule 2(i)(d) defined "Competent Authority" as Chairman, Andhra Pradesh State Council of Higher Education. Rule 2(i)(g) defined "Eligible Candidate" as the candidate who is eligible for admission as per the eligibility criteria prescribed under Rule 4. Under Rule 2(i)(j) the word 'Institutions' is defined as all the unaided Non-Minority Professional Institutions imparting professional courses in Engineering (including Technology) and Pharmacy. The words

"Qualified Candidate" is defined in Rule 2(i)(l) as the candidate who has appeared for the Common Entrance Test EAMCET/EAMCET-AC, as the case may be, for admission into the related professional course and has been assigned ranking in the Common Merit List as per Rule 5/12 of the Andhra Pradesh Common Entrance Test for entry into Engineering, Pharmacy, Agriculture, Medical and Dental Courses Rules, 2004 (for short "the 2004 Rules"). Rule 2(i)(m) defined "Qualifying Examination" as the examination of the minimum qualification passing of which entitles one to seek admission into the relevant professional course as prescribed in the 2004 Rules. Rule 3 deals with allotment of seats. The seats are divided into two categories, namely, 'A' category seats and 'B' category seats. Under 'A' category, 80% of sanctioned intake of seats in each course shall be filled with eligible candidates on the basis of rank obtained in EAMCET/EAMCET-AC as the case may be following the provision of sub-rule (1) of Rule 6 and the Rule of Reservation laid down in Rule 7. Under 'B' category, 20% of the total intake of seats in each course shall be open for admission to all the eligible candidates on merit basis including the candidates belonging to other States and Union Territories of India and NRIs. 15% of the 'B' category seats may be filled up with NRIs. Rule 4, which lays down eligibility criteria of admission, reads as under:

> "Eligibility Criteria for Admission:
> The eligibility criteria for admission into engineering (including Technology), Pharmacy, and Professional Courses shall be as mentioned below:
> (i) The candidate shall be an Indian National.
> (ii) The candidate should have completed 16 years of age as on 31st December of the Academic year for which the admissions are being conducted.

(iii) The candidate should have passed the qualifying examination (10+2) or equivalent on the date of his/her counselling for admission and secured a rank at the Common Entrance Test and should also satisfy other conditions laid down in these Rules:

Provided that the Category 'B' seats as specified in Rule 3 (iii) above shall be filled either on the basis of the rank obtained in the Common Entrance Test or on the basis of the rank obtained in All India Engineering Entrance Examination (AIEEE) conducted by the Central Board of Secondary Education:

Provided further that the NRI seats shall be filled with candidates who have passed the qualifying examination with not less than 60% of aggregate marks or Cumulative Grade Point Average (CGPA) equivalent to 6 on a scale of 10.

(iv) The vacant seats if any, may be filled with the candidates securing not less than 60% marks in aggregate or in group subjects in the qualifying examination duly ensuring merit and transparency.

(v) During admissions through Single Window System, the qualified candidates of EAMCET shall not be eligible for admission into the Institutions that have opted for EAMCET-AC on the basis of their Rank in EAMCET and vice-versa. However, such candidates shall be eligible for seeking admissions in the vacant seats to be filled by the institutions based on their merit as per Rule 6(i)(a)(11) or Rule 6(i)(b)(11) hereunder, as the case may be.

(vi) The candidate should satisfy Local/Non-Local status requirement for admission into Category A seats as laid down in the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 as subsequently amended."

Under Rule 5(i)(2), all the 'B' category seats shall be filled by the respective institutions on **"merit basis"** following the procedure laid down in Rule 6(ii).

Rule 6(i) deals with filling up of 'A' category seats (80%) and Rule 6(ii) is concerned with filling up of 'B' category seats (20%). Under Rule 6(i) a committee for EAMCET constituted by the competent authority shall advise the convenor EAMCET for smooth conduct of admissions and the convenor shall collect rank lists of the qualified candidates of EAMCET prepared by the convenor of EAMCET as per sub-rule (3) of Rule 5 of the 2004 Rules. The seats shall be allotted by adopting computerized single window system of counselling either by following centralized or decentralized online counselling functions at various centres and preparing the seat matrix of Unaided Non-Minority Professional Institutions.

Rule 6(ii), which deals with filling up of 'B' category seats, which is relevant for the present purpose is as follows:

"6(ii) TO FILL UP CATEGORY-B SEATS (20%)

(1) The Institution shall notify all the details of seats available under this category and conduct the admissions in a fair, transparent and non-exploitative manner.

(2) The NRI seats (not exceeding 15% of the sanctioned intake in each course) shall be filled on merit basis with NRI candidates who have passed the qualifying examination with not less than 60% of aggregate marks or Cumulative Grade Point Average (CGPA) equivalent to 6 on a scale of 10.

(3) The left over seats shall be filled by the management of the institution with candidates

from other States and Union Territories of India who have passed the qualifying examination and secured rank in AIEEE.

(4) If vacant sets still exists, such seats may be filled with any candidate securing not less than 60% of aggregate marks or 60% in group subjects in the qualifying examination.

(5) The institution shall obtain ratification from the Competent Authority for all the admissions conducted under Category-B seats by the institution.

(6) After scrutiny, the Competent Authority shall send the ratified list of candidates from outside the State, NRIs and others admitted by the Institution to the University concerned and also to the respective institutions."

Rule 8 stipulates that fee payable per student per annum for each discipline in each institution shall be as prescribed by AFRC. Rule 9 is a Transitory Provision under which it is envisaged that the Permanent Committee and Fee Fixation Committee constituted by the Government vide G.O.Ms.Nos.90 and 91, Higher Education Department dated 22.12.2003 and existing at the commencement of these Rules shall continue to discharge all the functions assigned to the AFRC under these rules till the Government constitutes the AFRC.

From the abovementioned Rules, it is evident that while the unaided non-minority professional institutions are bound to admit the students strictly in accordance with the allotment made by the convenor EAMCET admissions in respect of 'A' category seats (80%), certain amount of discretion is given to these institutions in filling up of 'B' category seats (20%). Among the 'B' category seats, a special category, namely, NRI seats is created to the extent not exceeding 15% of 'B' category seats. For non-NRI seats under Rule 4, which is

reproduced above, a candidate seeking admission must have obtained a rank in the common entrance test or on the basis of rank obtained in All India Engineering Entrance Examination (AIEEE) conducted by the Central Board of Secondary Education. However, for NRI seats while no such requirement is prescribed, the candidate must have passed qualifying examination (as defined in Rule 2(i)(m)) with not less than 60% of the obtained aggregate marks or Cumulative Grade Point Average (CGPA) equivalent to 6 on a scale of 10.

From the analysis of the above discussed Rules, it is clear that though the institutions are left free to fill the seats in 'B' category with the candidates of their choice, this freedom is not unlimited or unfettered. They are under obligation to notify the details of the seats available in a fair, transparent and non-exploitative manner. They are under further obligation to fill up the seats on merit basis.

We find from the Rules that the rule making authority (the Government) while stipulating that the availability of seats shall be notified, however, for reasons best known to it, failed to stipulate the method in which they shall be notified. Instead, it has deployed the adjectives "fair, transparent and non-exploitative" in the Rule. While for the present we refrain from going into the reasons for the omission on the part of the rule making authority in prescribing the method of notifying the seats, we would like to examine the meaning that can be ascribed to the words "shall notify" and 'fair' and 'transparent'.

Black's Law Dictionary, eighth edition, described the words 'fair' as "impartial; just; equitable; disinterested", 'transparency' as "openness; clarity; lack of guile and attempts to hide damaging information. The word is used of financial disclosures, organizational policies and practices, lawmaking, and other activities where organizations interact with the public."

The Constitution Bench in **TMA Pai Foundation (1 supra)**, while declaring the scheme framed by the Supreme Court in **Unni Krishnan, J.P. v. State of A.P.**[3] as invalid, however emphasized that the occupation of education is regarded as charitable and that while profiteering by the private educational institutions cannot be permitted, they can be allowed reasonable revenue surplus which may be generated by the educational institution for the purpose of development of education and expansion of the institution. While dealing with the necessity of encouraging merit in professional institutions Kirpal, C.J. speaking for the majority held as under:

> "58. For admission into any professional institution, merit must play an important role. While it may not be normaly possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. **Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission.** Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.
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> 59. **Merit is usually determined, for admission to professional and higher education colleges**, by either the marks that the student obtains at the qualifying examination or school-leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by Government agencies." (emphasis added)

Delving into the question as to how the management of both

minority and non-minority professional colleges can admit students in the quota allotted to them, the majority of a five Judge Constitution Bench in **Islamic Academy of Education (2 supra)** held that the majority judgment in **TMA Pai Foundation (1 supra)** has kept in mind the sad reality that there are a large number of professional colleges which indulge in profiteering and or charging of capitation fees and for this reason the majority judgment held that in professional colleges admissions must be on the basis of merit. In paragraph 16, the Supreme Court held as under:

> "16. ……We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the **merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit list**."
> (emphasis added)

The Supreme Court also directed State Governments to

constitute a committee headed by a retired High Court Judge, who can be nominated by the Chief Justice of that State and comprising members including a Chartered Accountant of repute in order to fix the fee structure with reference to the financial needs of the institutions and that fee fixed by such a committee shall be binding for a period of three years, at the end of which the institute would be at a liberty to apply for revision.

It is in this background that the Rules are framed, which laid emphasis on filling of 'B' category seats on merit basis (see Rule 5(i)(2)) to ensure that merit is followed as stipulated under Rule 6(ii) by notifying all the details of seats available in a "fair, transparent and non-exploitative manner".

In the context of the contention of the learned counsel for respondents 3 to 5 that they complied with the requirement of the Rule by displaying the merit list on the notice board, in our considered opinion, mere physical act of placing the merit list in the notice board of the college does not constitute sufficient compliance with Rule 6(ii)(1). The notification to be given must be in a fair and transparent manner. Unless the general public is made aware that the college is going to display the merit list in its notice board from a specified date up to a specified date, it is not possible for the candidates or their parents to know as to when a college is going to display the merit list. It is evident from the averments of the counter of respondent No.3, there are more than 270 private unaided engineering colleges in the State of Andhra Pradesh. It is well nigh impossible for the candidates or their parents to physically go to each college of their choice out of these colleges and verify whether a particular college has displayed the merit list on their notice board or not. Further, in the absence of a public announcement, it is impossible for anybody to prove that a

particular institution has not, as a fact, displayed the merit list in the notice board. We cannot ignore the fact that the premises of the colleges are ordinarily highly restricted areas without free and open access to the general public and if the private institutions do not intend to be transparent, they can always deny the general public access into the premises and at the same time claim when occasion arises that the particular candidate never visited their college premises. It is therefore to obviate the possible manipulations by the private managements that it is very much essential for them to inform the general public either by way of a press publication and/or through electronic media that the merit list will be displayed in the notice board during a specified period and the intending candidates are allowed free access at scheduled hours to visit the premises and apply for admission. This is how, in our opinion, the words 'notify' and 'fair' and 'transparent' occurring in Rule 6(ii)(1) shall be understood.

We are therefore of the view that by merely contending that they have displayed the merit list in the notice board without informing the public in the above mentioned manner before such display, the unaided private institutions running the professional colleges cannot wash off their hands.

In the light of the above conclusion, the further issue to be decided is whether the procedure followed by respondent Nos.3 to 5 conforms to the requirement of Rule 6(ii)(1) of the Rules.

As noted from the pleadings of respondent Nos.3 to 5 contained in their counter-affidavit, they have taken the stand that alleged notice dated 11.06.2007 was displayed in the notice board, copies of which have been filed as Ex.R-3/5. In paragraph 5 of the counter-affidavit, it is stated as under:

"The usual practice that is adopted by the society for

filling up of 'B' category seats is to notify the number of seats available under 'B' category by affixing notices in the notice board of the society and the colleges concerned. In fact, the notice dated 11.06.2007 was issued calling upon the students interested in seeking admission in 'B' category seats to approach the named representative of the society and the copy of the said notice which was displayed on the notice boards is annexed herewith as Ex.R-3/5. This is not the practice that is adopted by the 3rd respondent society or respondent Nos.4 and 5 institutions above and on the other hand it is the practice of all the private unaided engineering colleges in the State of Andhra Pradesh. There is no requirement in the statutory rules that notification is required to be published in newspapers. Usual practice adopted is that the students intending to take admissions in 'B' category would approach the respective management and obtain admissions after paying the requisite fees."

In paragraph 6, it is averred that (page 56)

"With reference to averments in paras 5 to 12 of the affidavit that 3rd respondent is not notifying the 'B' category seats is incorrect. Seats position is available in the web sites of the AICTE, Director of Technical Education, Convenor, EAMCET Admissions and the respective college web sites."

In view of the specific stand taken by respondent No.3 to 5 that the seat position was made available in the respective college web sites, we called upon the learned counsel for respondent Nos.3 to 5 to produce proof in respect there of. In response to the same, Sri D. Kamalakar Reddy filed an additional counter-affidavit in which it is averred that important notices of respondent Nos.4 and 5 colleges will be displayed under the head "notice board" in the web sites of both the

colleges; that the notice of available seats of various branches of both the colleges was displayed in the notice board on 11.06.2007 and also in the web sites; that in the process of updating the web notice board from time to time, old notices will be deleted and new notices would be pasted and that the notification of 'B' category seats was very much available in the college web sites till the end of July, 2007. It is further mentioned that since some new notices were displayed in August, 2007, the old notices were deleted and that as the deponent had no personal knowledge, he verified from Sri Swamy Das, Associate Professor, Computer Science Department in respect of respondent No.4 college and Sri Satyadev, Systems Engineer, Computer Science Department in respect of respondent No.5 and gathered the said information. It is also submitted that this information was also available in the web sites of respondent No.2 and EAMCET.

In the reply affidavit filed by petitioner No.2 in Writ Petition No.16585 of 2007, it is stated that his enquiry made with Sri Swamy Das, Associate Professor revealed that there was no display of notice on admissions into 'B' category in the web site of respondent No.4. He filed a letter dated 03.09.2007 addressed by Sri Swamy Das to the President of Chaitanya Bharati Institute of Technology Teachers Association and filed the same as Ex.P9. It is necessary to extract the contents of the said letter hereunder:

"Dated 03.09.2007

The President,
CBITTA (Chaitanya Bharathi Institute of
Technology Association,
Chaitanya Bharathi Institute of Technology.

Sub: Mentioning of my name in an affidavit dated 30th Aug-2007 in Writ Petition No.16585 of 2007, submitted by Sri D.Kamalakar Reddy, Secretary CBES and

Correspondent CBIT.

Sir,

It was brought to my notice that in an affidavit dated 30th Aug-2007 submitted by Sri D. Kamalakar Reddy, Secretary CBES and Correspondent CBIT in the High Court of Andhra Pradesh (copy enclosed for ready reference), it is mentioned that I, M. Swamy Das, Associate Professor, Computer Science and Engineering Department, CBIT, furnished information to Sri D. Kamalakar Reddy, Correspondent of Chaitanya Bharathi Institute of Technology (CBIT), and Secretary CBES.

Sir, let me state here categorically that I have never spoken to Sri D. Kamalakar Reddy nor have I furnished any of the information that is stated in the above mentioned affidavit (i.e., paragraph 3 of the affidavit) neither to Sri D. Kamlakar Reddy nor to anybody else.

Please ensure that I am not dragged into these matters, as I have no personal knowledge of these matters.

Please pursue this matter with the management and the principal and see that information that is not furnished by me is falsely attributed to me.

Thanking you,
Yours faithfully

Sd/-
(M. Swamy Das)
Associate Professor,
CSE Dept. CBIT

Copy to
1. Principal CBIT
2. Dr. B. Arun Kumar, Petitioner."

On being pointed out about the said letter of Sri Swamy Das, during the course of hearing, learned counsel for respondent Nos.3 to 5 took time and filed the affidavit of Sri M. Swamy Das in which it is

stated that when the Principal of the college forwards notices for being displayed on the notice board, they would be uploaded in the web site; that the data also gets uploaded from the respective departments into the web site; that the same is being done frequently and that the notices displayed in the notice board of the web site would be deleted as and when new notices are received. It is further stated that the notice regarding the admission into 'B' category seats of the college **could have been uploaded into web notice board** and continued till they were replaced by new notices. While obviously seeking to explain about the letter dated 03.09.2007, he stated that the Principal of the college had contacted him on 29.08.2007 and inquired about the serviceability of the web site and that he was not aware that the information required by the Principal was for incorporation of the same by the Secretary in his affidavit to be filed in the Court. He further stated that when he was informed by some persons over telephone that his name was referred to in the affidavit filed by Sri D. Kamalakar Reddy, he gave the letter dated 03.09.2007 to the Teachers Association with the hope that he will not be dragged into unnecessary controversies in future. In view of the apparent contradiction between his affidavit and the letter, Sri Swamy Das was directed to appear in-person and explain in the Court, which he did. He stated that the letter issued by him is in conformity with the stand taken by him in the affidavit and that he stands by the contents of the affidavit.

From the above it is clear that when respondent Nos.3 to 5 were required to produce the proof in support of their assertion that the information made available in the college web site, no material in support of the said stand was filed, except the additional counter-affidavit filed by the Secretary of respondent No.3 in which it was mentioned that the web notice relating to the availability of the seats

which was displayed for some time was deleted in the process of updating. From the above discussed documents including the affidavits, we find material variation in the stands of Sri D. Kamalakar Reddy and Sri Swamy Das. While the former asserted that the information about the display of web notice and its deletion was informed to him by Sri Swamy Das, the latter who stated that he was never contacted by Sri Kamalakar Reddy took the stand that he gave this information to the Principal of the college. This inconsistency in the stands taken by the said two persons coupled with the absence of any material produced before the court to show that the information was made available in the web site of the colleges make the stand of respondent Nos.3 to 5 difficult aspect. Added to this, Sri Swamy Das in his affidavit came out with an equivocal statement by stating that "similarly the notice regarding the admissions into 'B' category seats of the college could have been uploaded in the web notice board and continued till they were replaced by the new notices". Had the information been uploaded in the web site, there would have been no reason for Sri Swamy Das, who, on his own showing, is a member of college web site committee to come out with a vague statement by stating that the information "could have been uploaded" instead of asserting that it was in fact uploaded, but later deleted. He also failed to state when the information was deleted. If the information was really uploaded, the college would have maintained some record containing the respective dates on which it was uploaded and deleted. Though respondent Nos.3 to 5 stated that this information was also available in the web sites of respondent No.2 and the convenor EAMCET, they have not made any effort to produce material in support of this averment. We are therefore not in a position to accept the contention of respondent Nos.3 to 5 that the details of the availability of 'B'

category seats were uploaded in the web site of the two colleges.

We are equally unable to countenance the contention of Sri B.Adinarayana Rao that in order to ensure that 'B' category seats are filed up, they are adopting the procedure of filling up the seats on first come first served basis. This procedure, in our considered view, destroys the very spirit of selections based on merit and renders the judgments of the Supreme Court in **TMA Pai Foundation (1 supra)** and **Islamic Academy of Education (2 supra)** and the Rules made following the said judgments otiose. If the procedure followed by respondent No.3 is accepted, the persons with superior merit who approach the colleges later than the persons with far inferior merit will be denied seats. Such a situation would only lead to falling standards of the professional courses and would inevitably lead to commercialization of technical/higher education. In this connection the institutions running professional colleges would do well to remember that the Supreme Court in **TMA Pai Foundation (1 supra)** held in no uncertain terms that since the occupation of education is in a sense regarded as charitable, the object of the educational institution should not be to make a profit. It is only in order to give effect to this dicta, that the Supreme Court in **Islamic Academy of Education (2 supra)** directed constitution of necessary committees by the respective State Governments to go into the fee structure in order to see that the private unaided educational institutions imparting professional education do not suffer on account of inadequacy of funds. If respondent No.3 and similarly situated private institutions have any legitimate grievance that the fee being permitted to be charged is not adequate, it is for them to approach the committee and convince it for making a reasonable enhancement by producing relevant material before them. But in the guise of the sustenance of the colleges, they cannot sacrifice merit by

adopting a procedure which is far from being fair and transparent.

We therefore have no hesitation to hold that the procedure being followed by respondent No.3 in admitting the students into the engineering courses of respondent Nos.4 and 5 colleges is contrary to the Rules. However, since selections for the academic year 2007-08 have already been made though they were not finalized in view of the interim directions granted pending these writ petitions and as the selected candidates are not before us, we refrain from setting aside the selections made by Respondents 3 and 4 colleges. But however, we feel it expedient in larger public interest to give the following directions in respect of the procedure to be followed in notifying the merit list for filling up the 'B' category seats:

1. Respondents 1 and 2 shall ensure that the unaided non-minority private engineering colleges in the State shall strictly adhere to Rule 6(ii)(1) of the Rules by notifying the merit list in the manner indicated in this judgment. They shall also ensure that these details are uploaded in the respective colleges' websites apart from the websites of respondents 1 and 2.
2. Respondent No.2, which is the competent authority to approve the list of admissions in respect of category 'B' seats shall issue operating guidelines to effectuate Rule 6(ii)(1) of the Rules.
3. Respondent No.2 shall actively oversee the process of admissions by the unaided non-minority private managements from the time of commencement of the process till the approval of the list submitted by the colleges and shall take appropriate action wherever it finds that the colleges indulged in violation of the Rule either by not

following the procedure in the proposed operating guidelines or by denying seats to students with superior merit and who have duly applied for seats; and

4. Respondent No.3 shall provide seats to petitioner No.1 in W.P.No.16585 of 2007, the petitioners in W.P.No.16290 of 2007, petitioner No.1 in W.P.No.17363 of 2007 and petitioner No.1 in W.P.No.17286 of 2007 subject to the availability of seats in 'B' category and their eligibility, merit and willingness to join either of the respondent Nos.3 and 4 colleges. Within three days the petitioners shall approach respondent Nos.3 to 5 for this purpose. In the event admissions are denied to the aforementioned petitioners, respondent No.3 shall communicate reasons therefor in writing to the respective petitioners within two days of petitioners approaching them and complying with all formalities.

Subject to the above observations, the writ petitions are disposed of.

As a sequel to the disposal of the writ petitions, W.P.M.P.Nos.20721 of 2007 and 20722 of 2007 in W.P.No.16290 of 2007, W.P.M.P Nos.21121 of 2007 and 21122 of 2007 in W.P.No.16585 of 2007, W.P.M.P.Nos.22115 of 2007 and 22116 of 2007 in W.P.No.17286 of 2007 and W.P.M.P.Nos.22202 of 2007 and 22203 of 2007 in W.P. No.17363 of 2007 are dismissed as infructuous.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 28.08.2007.

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*** HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

+WRIT PETITION Nos. 16290, 16585, 17286 and 17363 of 2007

% Dated 28-09-2007

M. Ratin and another

… Petitioners
(in WP.No.16290 of 2007)

B. Swaroop Kumar and another.

… Petitioners
(in WP.No.16585 of 2007)

S. Namrata Salunke and another.

… Petitioners
(in WP.No.17286 of 2007)

C. Sandeep Kumar and another.

… Petitioners
(in WP.No.17363 of 2007)

VERSUS

$ Government of Andhra Pradesh,
Higher Education (EC) Department, represented
by its Principal Secretary and six others.

… Respondents
(in all writ petitions)

! Counsel for the petitioners all writ petitions:
Sri M.Satyanarayana Goud

^ Counsel for respondent No.1 : Government Pleader for Higher Education

Counsel for Respondent Nos.3to 5 : Sri B. Adinarayana Rao
(in all writ petitions)

<GIST:

> HEAD NOTE:

? Cases referred

1. (2002) 8 SCC 481
2. (2003) 6 SCC 697
3. (1993) 1 SCC 645

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[1] (2002) 8 SCC 481

[2] (2003) 6 SCC 697

[3] (1993) 1 SCC 645